IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.21 OF 2004
IN
SUMMARY SUIT NO.3016 OF 2003

M/s.Jubliant Organdeys Ltd. .. Plaintiff

Vs.

M/s.Mafatlal Dies and Chemicals Ltd. .. Defendants

Mr.Milind Vasudeo i/b Utangale and Co. for the plaintiff

Mr.Sadin Chandrara i/b M.K.Ambalal and Co. for the defendants

CORAM : S.U.KAMDAR, J
DATED : 31ST AUGUST, 2005

P.C.:

1. The present suit is filed in respect of goods sold and delivered by the plaintiffs to the defendants. There are invoices and consignment notes in respect of goos sold and delivered. Over and above the same, the plaintiffs are also relying upon the minutes of meeting held on 17.4.03 wherein the defendants have accepted the liability of Rs.67,24,400/-. In Exh.G to the plaint the plaintiffs have also given break up of particulars

of claim showing which bills are outstanding and total principal amount claim is of Rs.54,60,121/- with interest of Rs.1,61,922/- totalling to Rs.56,22,043/-. The defendants have filed an affidavit in reply wherein in para 12 and 13 they have admitted the said liability. However, the learned counsel for the defendants states that the statement of account which is annexed at Ex.C to the affidavit in reply indicates that they have made payment of Rs.61,72,522/- and that amount is not given credit of.

2. I do not find any substance in respect of the said argument for the simple reason that once bill wise break up of outstanding is given in particulars of claim it was for the defendants to show that out of the said bills which bill has been paid under which cheque number. The defendants having failed to do so, I find there is no defence in the present suit. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.50 lacs within 8 weeks failing which plaintiffs will be entitled to decree. If the said amount is

deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 1 year and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.